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THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:



Doc#: 1135331109 Fee: \$74.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/19/2011 04:41 PM Pg: 1 of 20

Dykema Gossett PLLC
10 South Wacker Drive, Suite 2300
Chicago, Illinois 60606
Attn: Derek L. Cottier, Esq.

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "**Agreement**") is entered into as of December 19, 2011 by and among **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, its successors and/or assigns ("**Senior Lender**"), **HEARTLAND HOUSING, INC.**, an Illinois not-for-profit corporation ("**Heartland**"), **ENTERPRISE COMMUNITY LOAN FUND, INC.**, a Maryland nonprofit corporation ("**Enterprise**"), and together with Heartland, each a "**Subordinate Lender**" and together, the "**Subordinate Lenders**"), and **VICEROY HOTEL LIMITED PARTNERSHIP**, an Illinois limited partnership ("**Borrower**").

Recitals

A. Pursuant to the terms and conditions of that certain Construction Loan Agreement by and between Senior Lender and Borrower of even date herewith (the "**Senior Loan Agreement**"), the Senior Lender has agreed to make available to Borrower a construction loan in the stated principal amount of \$6,122,877.00 (this principal sum of \$6,122,877.00, together with interest to accrue thereon and any and all other Payments Obligations (as hereinafter defined) in connection therewith, is referred to herein as the "**U.S. Bank Loan**" or "**Senior Loan**"). The Senior Loan is or will be secured by that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing of even date herewith granted by Borrower to Senior Lender (the "**U.S. Bank Mortgage**" or the "**Senior Mortgage**") encumbering that certain single occupancy, multifamily housing project located in Chicago, Illinois commonly known as the Viceroy Hotel (the "**Property**"). The Property is more fully described in Exhibit A attached hereto. The Borrower's obligation to repay the Senior Loan is evidenced by that certain Promissory Note of even date herewith made by Borrower to the order of Senior Lender in the stated principal amount of \$6,122,877.00 (as amended from time to time, the "**Senior Note**"). Payment of the Senior Note is due in full on December 19, 2013.

B. The Borrower has requested that the Senior Lender permit Heartland to make a subordinate loan to Borrower in the amount of \$1,261,386.00 (this principal sum of \$1,261,386.00 together with interest to accrue thereon and any and all other Payments Obligations (as hereinafter defined) in connection therewith, is referred to herein as the "**IAHTC/DCEO Proceeds Loan**") and to secure the IAHTC/DCEO Proceeds Loan by, among other things, placing a mortgage lien against the Property. The Borrower's obligation to repay

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the IAHTC/DCEO Proceeds Loan is evidenced by that certain Sponsor Loan Promissory Note of even date herewith made by Borrower to the order of Heartland in the stated principal amount of \$1,261,386.00 (as amended from time to time, the "**IAHTC/DCEO Note**"). The IAHTC/DCEO Proceeds Loan is or will be secured by that certain Junior Mortgage, Assignment of Rents and Security Agreement (Sponsor Loan) of even date herewith granted by Borrower to Heartland (the "**IAHTC/DCEO Mortgage**") encumbering the Property.

C. The Borrower has requested that the Senior Lender permit Heartland to make a subordinate loan to Borrower in the amount of \$2,335,100.00 (this principal sum of \$2,335,100.00 together with interest to accrue thereon and any and all other Payments Obligations in connection therewith, is referred to herein as the "**Seller Financing Loan**") and to secure the Seller Financing Loan by, among other things, placing a mortgage lien against the Property. The Borrower's obligation to repay the Seller Financing Loan is evidenced by that certain Seller Financing Promissory Note of even date herewith made by Borrower to the order of Heartland in the stated principal amount of \$2,335,100.00 (as amended from time to time, the "**Seller Financing Note**"). The Seller Financing Loan is or will be secured by that certain Junior Mortgage, Assignment of Rents and Security Agreement (Seller Financing) of even date herewith granted by Borrower to Heartland (the "**Seller Financing Mortgage**") encumbering the Property.

D. The Borrower has requested that the Senior Lender permit Heartland to make a subordinate loan to Borrower in the amount of \$3,876,673.00 (this principal sum of \$3,876,673.00 together with interest to accrue thereon and any and all other Payments Obligations in connection therewith, is referred to herein as the "**TIF Proceeds Loan**") and to secure the TIF Proceeds Loan by, among other things, placing a mortgage lien against the Property. The Borrower's obligation to repay the TIF Proceeds Loan is evidenced by that certain TIF Loan Promissory Note of even date herewith made by Borrower to the order of Heartland in the stated principal amount of \$3,876,673.00 (as amended from time to time, the "**TIF Note**"). The TIF Proceeds Loan is or will be secured by that certain Junior Mortgage, Assignment of Rents and Security Agreement (TIF) of even date herewith granted by Borrower to Heartland (the "**TIF Mortgage**") encumbering the Property.

E. The Borrower has requested that the Senior Lender permit Enterprise to make a subordinate loan to Borrower in the amount of \$4,000,000.00 (this principal sum of \$4,000,000.00 together with interest to accrue thereon and any and all other Payments Obligations in connection therewith, is referred to herein as the "**Enterprise Loan**") and to secure the Enterprise Loan by, among other things, placing a mortgage lien against the Property. The Borrower's obligation to repay the Enterprise Loan is evidenced by that certain Promissory Note of even date herewith made by Borrower to the order of Enterprise in the stated principal amount of \$4,000,000.00 (as amended from time to time, the "**Enterprise Note**"). The Enterprise Loan is or will be secured by that certain Multifamily Mortgage, Assignment of Rents and Security Agreement of even date herewith granted by Borrower to Enterprise (the "**Enterprise Mortgage**") encumbering the Property.

F. The IAHTC/DCEO Proceeds Loan, the Seller Financing Loan, the TIF Proceeds Loan, and the Enterprise Loan are hereinafter referred to collectively as the "**Subordinate Loans**." The IAHTC/DCEO Note, the Seller Financing Note, the TIF Note, and the Enterprise

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Note are hereinafter referred to collectively as the “**Notes**”. The IAHTC/DCEO Mortgage, the Seller Financing Mortgage, the TIF Mortgage, and the Enterprise Mortgage are hereinafter referred to collectively as the “**Subordinate Mortgages**.” The IAHTC/DCEO Mortgage, the Seller Financing Mortgage and the TIF Mortgage are referred to as the “**Heartland Mortgages**” and the IAHTC/DCEO Proceeds Loan, Seller Financing Loan and TIF Proceeds Loan are referred to as the “**Heartland Loans**”.

G. The Senior Lender has agreed to permit the Subordinate Lenders to make the Subordinate Loans and to place subordinate mortgage liens against the Property, subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lenders to make their respective Subordinate Loans to the Borrower and to place subordinate mortgage liens against the Property, and in consideration thereof, the Senior Lender and the Subordinate Lenders and the Borrower agree as follows:

1. **Definitions.**

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

"Borrower" means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender or Enterprise, after such time as the Senior Loan is paid in full) who acquires title to the Property after the date of this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

"Default Notice" means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a Senior Loan Default has occurred under the Senior Loan; or (b) a copy of the written notice from any Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under any of the Subordinate Loans. Each Default Notice shall specify the default upon which such Default Notice is based.

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"Heartland Loan Documents" means the Heartland Notes, the Heartland Mortgages and all other documents evidencing, securing or otherwise executed and delivered in connection with the Heartland Loans.

"Heartland Notes" means the IAHTC/DCEO Note, the Seller Financing Note and the TIF Note.

"Lenders" means the Senior Lender and the Subordinate Lenders.

"Payment Obligation" means, with respect to the Senior Loan and each of the Subordinate Loans, any and all fees, expenses and payment obligations of whatever nature payable in connection therewith (including, but not limited to, administrative fees, protective advances and payments with respect to indemnification obligations).

"Person" means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

"Senior Lender" means, initially, the Person named as such in the first paragraph on page 1 of this Agreement; provided, however that as of the date the U.S. Bank Mortgage is satisfied and discharged, Enterprise will be deemed a "Senior Lender" for purposes of construing Enterprise's, Borrower's and Heartland's rights under this Agreement.

"Senior Loan Default" means the occurrence of an "Event of Default" as that term is defined in the Senior Loan Documents.

"Senior Loan Documents" means the Senior Loan Agreement, the Senior Note, the Senior Mortgage and all other documents evidencing, securing or otherwise executed and delivered in connection with the Senior Loan.

"Subordinate Lenders" means each of the Persons named as such in the first paragraph on page 1 of this Agreement.

"Subordinate Loan Default" means a default by the Borrower in performing or observing any of the terms, covenants or conditions in any of the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

"Subordinate Loan Documents" means the Subordinate Notes, the Subordinate Mortgages, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loans.

2. **Permission to Place Mortgage Lien Against Property.**

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lenders to record their respective Subordinate Mortgages against the Property to secure the Borrower's obligation to repay the Subordinate Notes and all other

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obligations, indebtedness and liabilities of the Borrower to the Subordinate Lenders under and in connection with the Subordinate Loans. Such permission is subject to the condition that each of the representations and warranties made by the Borrower and each of the Subordinate Lenders in Section 3 is true and correct on the date of this Agreement and shall remain true at all times during the term of this Agreement. If any of the representations and warranties made by the Borrower or any of the Subordinate Lenders in Section 3 is not true and correct at any time during the term of this Agreement, the provisions of the Senior Loan Documents applicable to unpermitted liens on the Property shall apply.

3. **Borrower's and Subordinate Lender's Representations and Warranties.**

The Borrower and each of the Subordinate Lenders make the following representations and warranties to the Senior Lender:

(a) Subordinate Notes.

(1) The Enterprise Note shall be deemed to contain the following provision:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by that certain Promissory Note of even date herewith made by Viceroy Hotel Limited Partnership, an Illinois limited partnership ("Borrower") to the order of U.S. Bank National Association, a national banking association ("Senior Lender") in the stated principal amount of \$6,122,877.00 (as amended from time to time, the "Senior Note"), to the extent and in the manner provided in that certain Subordination Agreement of even date herewith between the Subordinate Lenders (as defined therein), Borrower, the Senior Lender (the "Subordination Agreement"). The mortgage securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing of even date herewith granted by Borrower to Senior Lender securing the Senior Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the mortgage securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the payee of this Note under the Subordination Agreement.

(2) The Heartland Notes shall be deemed to contain the following provision:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by that certain Promissory Note of even date herewith made by

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Viceroy Hotel Limited Partnership, an Illinois limited partnership ("Borrower") to the order of U.S. Bank National Association, a national banking association ("Senior Lender") in the stated principal amount of \$6,122,877.00 (as amended from time to time, the "Senior Note"), and to that certain Promissory Note of even date herewith made by Borrower to the order of Enterprise Community Loan Fund, Inc., a Maryland nonprofit corporation ("Enterprise") in the stated principal amount of \$4,000,000.00 (as amended from time to time, the "Enterprise Note") to the extent and in the manner provided in that certain Subordination Agreement of even date herewith between the Subordinate Lenders (as defined therein), Borrower and the Senior Lender (the "Subordination Agreement"). The mortgage securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases of even date herewith granted by Borrower to Senior Lender securing the Senior Note and to that certain Multifamily Mortgage, Assignment of Rents and Security Agreement and Fixture Filing of even date herewith granted by Borrower to Enterprise securing the Enterprise Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the mortgage securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the payee of this Note under the Subordination Agreement.

(b) **Term.** The term of each of the Subordinate Notes does not end prior to the maturity date of the Senior Note. The term of each of the Heartland Notes does not end prior to the maturity date of the Enterprise Note.

(c) **Subordinate Loan Documents.** Borrower is, concurrently with the execution of this Agreement, delivering to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

(d) **Senior Loan Documents.** Borrower is, concurrently with the execution of this Agreement, delivering to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

4. **Terms of Subordination.**

(a) **Mortgage Lien Priorities.** Borrower and Lenders hereto agree that the mortgage liens of the respective Lenders shall have the following priorities:

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<u>Loan</u>	<u>Lien Priority</u>
Senior Loan (in favor of U.S. Bank National Association)	1 st
Enterprise Loan	2 nd
Seller Financing Loan	3 rd
IAHTC/DCEO Proceeds Loan	4 th
TIF Proceeds Loan	5 th

(b) **Agreement to Subordinate.** The Senior Lender and each of the Subordinate Lenders agree that: (i) the indebtedness evidenced by each of the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgages and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Mortgage and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Mortgage, curing defaults by the Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Mortgage or the Senior Loan Documents, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property). As of the date the U.S. Bank Mortgage is satisfied and discharged, the Enterprise Note and all other documents evidencing the Enterprise Loan will be deemed to be the "Senior Loan Documents" and Enterprise shall become the "Senior Lender" for all purposes of this Agreement; provided, however, that all provisions herein relating to the "Senior Mortgage" shall not be applicable from and after such date.

(c) **Subordination of Subrogation Rights.** Each Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Senior Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Mortgage.

(d) **Payments Before Senior Loan Default.** Until the Senior Loan is repaid in full, Heartland shall not accept any payments with respect to its Subordinate Loans. Until Enterprise receives a Default Notice of a Senior Loan Default from the Senior Lender, Enterprise shall be entitled to retain for its own account all payments made under or pursuant to its Subordinate Loan Documents; provided, however, that Enterprise may not accept a prepayment, in whole or in part, of its Subordinate Loan without the prior written consent of the Senior Lender. Notwithstanding the foregoing, as of the date the Senior Mortgage and the Enterprise Mortgage are satisfied and discharged, the Borrower shall be entitled to pay, and Heartland shall be entitled to accept, payments with respect to the Heartland Loans, as may be permitted pursuant to Exhibit A-4 of the Partnership

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Agreement (as defined in the Senior Loan Agreement), until Borrower receives notice of an Event of Default of the Enterprise Loan.

(e) **Payments After Senior Loan Default.** The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by any of the Subordinate Mortgages) without the Senior Lender's prior written consent. Each Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing such Subordinate Lender not to accept payments from the Borrower on account of its Subordinate Loan, it will not accept any payments under or pursuant to its Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by its Subordinate Mortgage) without the Senior Lender's prior written consent. If any Subordinate Lender receives written notice from the Senior Lender that the Senior Loan Default which gave rise to a Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to such Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to such Subordinate Lender by the Borrower prior to such Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

(f) **Bankruptcy Provisions.** In the event of any proceedings to liquidate, dissolve or wind up the Borrower, or of any execution, sale, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization, or other similar proceedings relative to the Borrower or its property (a "**Bankruptcy Proceeding**"), to the fullest extent permitted by law, the payment and lien priorities set forth in this Agreement shall be respected and enforced in any such Bankruptcy Proceeding, and each Subordinate Lender and Borrower agree not to contest such priorities in any Bankruptcy Proceeding. Without limitation to the foregoing, the Senior Loan shall be preferred in payment over all of the Subordinate Loans and shall be paid in full before any payment is made upon any of the Subordinate Loans; and any payment or distribution of any kind or character, whether in cash, property or securities, made upon or in respect of any of the Subordinate Loans as a result of any such proceeding shall be paid over to the Senior Lender for application in payment of the Senior Loan unless and until the Senior Loan shall have been paid or satisfied in full. Each Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding with respect to the Borrower without (i) sixty (60) days prior written notice to the Senior Lender of such intent, and (ii) payment in full of the outstanding principal balance of and all accrued and unpaid interest under the Senior Loan, together with all other amounts secured by the Senior Mortgage. Upon the occurrence of any Bankruptcy Proceeding with respect to the Borrower, each Subordinate Lender agrees to fully cooperate with Senior Lender in connection with such Bankruptcy Proceeding and to refrain from taking any actions which are inconsistent with the agreements contained in this Agreement. Without limitation to the foregoing, each Subordinate Lender shall (i) consent to and vote in favor of any and all actions taken by

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Senior Lender in any Bankruptcy Proceeding to permit the commencement or continuation of any foreclosure of the Senior Mortgage; (ii) not propose any plan, or vote to confirm or take any other action in support of any plan or other course of action proposed by Borrower or any other party (other than Senior Lender), which would have the effect of (A) impairing the priority or lien of the Senior Loan, or (B) delaying, preventing, limiting, requiring a reduction in the amount of or impairing Senior Lender's collection of all or any portion of the Senior Loan.

5. **Default Under Subordinate Loan Documents.**

(a) **Notice of Default and Cure Rights.** Each Subordinate Lender shall deliver to the Senior Lender and the other Subordinate Lenders a copy of any Default Notice delivered by such Subordinate Lender to Borrower concurrently with the delivery of such Default Notice to the Borrower. The Senior Lender (and Enterprise, subject to the rights of the Senior Lender during the term of the U.S. Bank Loan) shall have the right, but not the obligation, to cure any Subordinate Loan Default within the latest to occur of (i) the cure period, if any, granted to the Borrower under the applicable Subordinate Loan Documents; (ii) ten (10) days after delivery of the Default Notice to Senior Lender for any default that may be cured in full by the payment of money (a "**Monetary Default**"), and (iii) twenty (20) days after delivery of the Default Notice to Senior Lender for any default that may, by its nature, be cured but that cannot be cured solely by the payment of money (a "**Nonmonetary Default**"). All amounts paid by the Senior Lender to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the Senior Mortgage.

(b) **Subordinate Lender's Exercise of Remedies.** Prior to the first to occur of (i) the repayment in full of the Senior Loan, and (ii) commencement of foreclosure proceedings under the Senior Loan Documents, each Subordinate Lender agrees that it will not commence foreclosure proceedings under the Subordinate Loan Documents, or exercise any other rights or remedies it may have under the Subordinate Loan Documents, without the prior written consent of Senior Lender, which consent Senior Lender may grant or withhold in Senior Lender's sole and absolute discretion.

(c) **Cross Default.** The Borrower and each Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If a Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by such Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such Senior Loan Default.

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6. **Default Under Senior Loan Documents.**

(a) **Notice of Default and Cure Rights.** The Senior Lender shall deliver to each Subordinate Lender a copy of any Default Notice delivered by the Senior Lender to Borrower concurrently with the delivery of such Default Notice to the Borrower. Failure of Senior Lender to deliver a copy of any Default Notice to the Subordinate Lenders shall not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. Each Subordinate Lender shall have the right, but not the obligation, to cure any Senior Loan Default within the latest to occur of (i) the cure period, if any, granted to the Borrower under the applicable Senior Loan Documents; (ii) ten (10) days after delivery of the Default Notice to such Subordinate Lender for any Monetary Default, and (iii) twenty (20) days after delivery of the Default Notice to such Subordinate Lender for any Nonmonetary Default. Senior Lender shall forebear from exercising its remedies under the Senior Loan Documents during the pendency of the cure periods for the Subordinate Lender provided under clauses (i) and (ii) of the preceding sentence, and will also forebear from exercising its remedies during the cure period provided in clause (iii) of the preceding sentence so long as (A) such Subordinate Lender keeps current all payments required by the Senior Loan Documents, and (B) Senior Lender, in its sole discretion, determines that such non-monetary default does not impair, threaten or jeopardize the continued operation and safety and the value of the Property and the priority, validity and enforceability of the liens created by the Senior Mortgage or any of the other Senior Loan Documents. All amounts paid by any Subordinate Lender to the Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by such Subordinate Lender pursuant to, and shall be secured by the lien of, such Subordinate Lender's Subordinate Mortgage.

(b) **Cross Default.** Each Subordinate Lender agrees that, notwithstanding any contrary provision contained in its Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under its Subordinate Loan Documents if no other default occurred under such Subordinate Lender's Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the Senior Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the Senior Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on the Senior Mortgage. If at any time the Borrower cures any Senior Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior Lender to each Subordinate Lender, any default under any of the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loans shall be retroactively reinstated as if such Senior Loan Default had never occurred.

7. **Conflict.**

The Borrower, the Senior Lender and each Subordinate Lender agree that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any Senior Loan Default

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or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

8. **Rights and Obligations of the Subordinate Lenders Under the Subordinate Loan Documents and of the Senior Lender under the Senior Loan Documents.**

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter; provided, however, that as of the date the U.S. Bank Mortgage is satisfied and discharged, the following provisions shall apply to the Heartland Loan Documents, only:

(a) **Protection of Security Interest.** No Subordinate Lender shall, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, its Subordinate Loan Documents, except that each Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to its Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums; constructing, renovating, repairing, furnishing, fixturing or equipping the Property; making necessary repairs to the Property and curing other defaults by the Borrower under its Subordinate Loan Documents.

(b) **Condemnation or Casualty.** In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the Senior Mortgage remains a lien on the Property the following provisions shall apply:

(1) Each Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the Senior Loan Documents with respect thereto, and each Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by the Senior Lender in accordance with the provisions of the Senior Mortgage; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the

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Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the relative priorities and applicable provisions of the Subordinate Loan Documents.

(c) **Payment and Performance Bonds.** Borrower, Senior Lender, and Enterprise have been named as co-obligees, as their respective interests may appear, under certain payment, performance, completion or similar bonds, indemnities and/or surety agreements (the "**Performance Bonds**") issued in connection with the construction of the units to be constructed on the Property (the "**Project**"). The Subordinate Lenders and Borrower each acknowledge and agree that, until such time as the Senior Loan has been repaid in full, (a) the Senior Loan Documents shall control the exercise of rights under or arising out of the Performance Bonds and application of any and all proceeds of the Performance Bonds (the "**Performance Bond Proceeds**"), and (b) Senior Lender, in accordance with the provisions of the Senior Mortgage, shall make all determinations as to the application of Performance Bond Proceeds, either to repayment of indebtedness secured by the Property, or to the completion of the Project; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan, shall be paid to, and may be applied by, the Subordinate Lenders in accordance with the relative priorities of the Subordinate Loan Documents.

(d) **No Modification of Subordinate Loan Documents.** The Borrower and each Subordinate Lender agree that until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, amend or modify any material provision of the Subordinate Loan Documents. Subordinate Lenders may assign their respective Subordinate Loan only upon the prior written consent of Senior Lender, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Senior Lender's consent shall not be required in connection with an assignment to an Affiliate of any Subordinate Lender.

9. **Assignment, Modification or Refinancing of Senior Loan.**

(a) **Assignment of the Senior Loan.** Each Subordinate Lender acknowledges and agrees that Senior Lender, at any time, shall have the right to sell, assign, transfer, or negotiate the Senior Loan and the Senior Loan Documents, in whole or in part, and to grant participation interests in the Senior Loan and the Senior Loan Documents, without the consent of any Subordinate Lender. Senior Lender shall deliver written notice to each Subordinate Lender of any assignment of the Senior Loan not later than the date of such assignment.

(b) **Modification of the Senior Loan.** Each Subordinate Lender, in its capacity as a Subordinate Lender only, consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents; provided, however, that no such modification shall have

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the effect of increasing the indebtedness under the Senior Loan, or increasing any scheduled payments of principal due on the Senior Loan without Enterprise's consent.

(c) **Refinancing of the Senior Loan.** Each Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the sole purpose of refinancing the outstanding principal amount of, and accrued interest and other sums then due with respect to, the Senior Loan. All the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan, the Senior Note, the Senior Mortgage, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

10. **Default by the Subordinate Lender or Senior Lender.**

If any of the Subordinate Lenders or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief to the extent necessary to compensate and restore the non-defaulting lender to the position it would have been in had the defaulting lender performed or observed such terms, covenants or conditions.

11. **Notices.**

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender are required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

To Senior Lender: U.S. Bank National Association
1 South Pinckney Street
Madison, Wisconsin 53703
Attn: Karyn Knaak, Vice President

With copy to: Dykema Gossett PLLC
10 South Wacker Drive, Suite 2300
Chicago, Illinois 60606
Attn: Derek L. Cottier

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To Borrower: Viceroy Hotel Limited Partnership
 c/o Viceroy GP, LLC
 208 South LaSalle Street, Suite 1818
 Chicago, Illinois 60604
 Attn: Michael Goldberg

With copy to: First Baptist Congregational Church of Chicago
 1616 W. Washington Boulevard
 Chicago, Illinois 60612
 Attn: Rev. George Daniels

To Heartland: Heartland Housing, Inc.
 208 South LaSalle Street, Suite 1818
 Chicago, Illinois 60604
 Attn: Michael Goldberg

With copy to: Applegate & Thorne-Thomsen
 626 West Jackson Boulevard, Suite 400
 Chicago, Illinois 60661
 Attn: William Skalitzky

To Enterprise: Enterprise Community Loan Fund, Inc.
 10227 Wincopin Circle
 Columbia, Maryland 21044
 Attention: Timothy E. Martin, Chief Credit Officer

With copy to: Enterprise Community Loan Fund, Inc.
 c/o Enterprise Community Partners, Inc.
 1 Whitehall Street, 11th floor
 New York, NY 10004
 Attention: Gail Bayarin, Staff Attorney

Any party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

12. General.

(a) **Assignment/Successors.** This Agreement shall be binding upon the Borrower, the Senior Lender, the Subordinate Lenders and their respective legal successors and assigns, and shall inure to the benefit of the Senior Lender, the Subordinate Lenders and their respective legal successors and assigns.

(b) **No Partnership or Joint Venture.** The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender

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as a joint venturer or partner of any Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) **Senior Lender's and Subordinate Lender's Consent.** Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lenders' consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by any Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) **Further Assurances.** The Subordinate Lenders, the Senior Lender and the Borrower agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgages are subordinate to the lien, covenants and conditions of the Senior Mortgage, or to further evidence the intent of this Agreement.

(e) **Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) **Governing Law.** This Agreement shall be governed by the laws of the State of Illinois.

(g) **Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Enterprise Loan (provided, however, that the U.S. Bank Loan shall have been paid in full) (provided, however, that this Agreement shall, as provided in Section 9 hereof, remain in full force and effect if the Senior Loan shall be refinanced), (ii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Mortgage; (iii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which a Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; or (iv) the acquisition by any Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, its Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

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ENTERPRISE:

ENTERPRISE COMMUNITY LOAN FUND, INC., a Maryland nonprofit corporation

By: Charlotte Crow
Name: Charlotte Crow
Title: VP and Treasurer

ACKNOWLEDGMENT

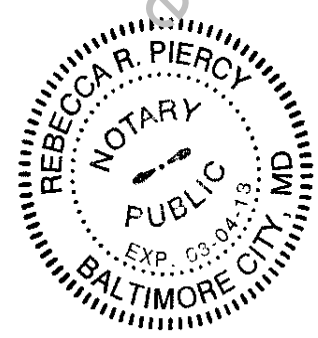
STATE OF MARYLAND)
) ss.
COUNTY OF HOWARD)

I, Rebecca R. Piercy a Notary Public in and for ^{Baltimore City} ~~said County~~, in the State aforesaid, do hereby certify that Charlotte Crow, the VP and Treasurer of **ENTERPRISE COMMUNITY LOAN FUND, INC.**, a Maryland nonprofit corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such VP and Treasurer appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of such corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 16th day of December, 2011.

Rebecca R. Piercy
NOTARY PUBLIC

(SEAL)



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EXHIBIT A

LEGAL DESCRIPTION

LOTS 6 THROUGH 13 IN LAFLIN AND MATHER'S SUBDIVISION OF THE NORTH PART OF BLOCK 'D' IN THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, SOMETIMES CALLED BLOCK 'D' IN WRIGHT'S ADDITION TO CHICAGO AND BEING IN THE SOUTH PART OF LOT 4 IN THE CIRCUIT COURT PARTITION OF THE SOUTHWEST 1/4 OF SECTION 8 AFORESAID, IN COOK COUNTY, ILLINOIS.

Address: 1517-21 W. Warren Boulevard, Chicago, Illinois

PIN: 17-08-332-005-0000, 17-08-332-006-0000, 17-08-332-007-0000, VOL. 590.

Property of Cook County Clerk's Office

Exhibit A-1